IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CRIMINAL CASE NO. 1:07cr34

UNITED STATES OF AMERICA,	)	
	)	
	)	
vs.	)	**O R D E R**
	)	
	)	
KEVIN ANTHONY HARPER.	)	
	)	

THIS MATTER is before the Court on the Defendant's *pro se* "Motion/Letter Requesting Correction" [Doc. 48], filed on November 20, 2009.

On April 3, 2007, the Defendant was charged in a three-count Bill of Indictment with possession of counterfeit currency, in violation of 18 U.S.C. § 472 (Count One); possession of a firearm after having been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1) (Count Two); and possession of seventy-four rounds of ammunition after having been convicted of a felony, in violation of 18 U.S.C. § 922(g)(1) (Count Three). [Indictment, Doc. 1].

The Defendant pled guilty pursuant to a Plea Agreement to Counts One and Two of the Bill of Indictment, and Count Three was dismissed. [Plea Agreement, Doc. 10].

The Defendant was sentenced on November 27, 2007, to a term of imprisonment of 84 months on Count One and 120 months on Count Two, to run concurrently. [Doc. 23]. An Amended Judgment was entered on December 21, 2007, sentencing the Defendant to a term of imprisonment of 57 months on Count One and 87 months on Count Two, to run concurrently. [Doc. 31].

The Defendant appealed [Doc. 25], but on January 21, 2009, the Court of Appeals entered a Judgment dismissing that appeal. [Doc. 44]. Thereafter, the Defendant filed the present letter/motion with the Court.

In his letter/motion, the Defendant contends that his criminal history was not properly calculated in his Presentence Report. Specifically, he contends that he should not have been assessed criminal history points for certain minor offenses pursuant to U.S.S.G. § 4A1.2(c). [Doc. 48].

The Defendant's motion is entirely without merit. Pursuant to U.S.S.G. § 4A1.1(c) (2006)[1], a defendant is assessed one criminal history

[1]The Court applied the 2006 edition of the United States Sentencing Guidelines in sentencing the Defendant.

point, up to a maximum of four points, for each "prior sentence" not counted under § 4A1.1(a) (sentences of imprisonment exceeding one year and one month) or § 4A1.1(b) (sentences of imprisonment at least sixty days). See U.S.S.G. § 4A1.1, App. Note 3 (2006). The Guidelines provide that in making this calculation, sentences for certain specified non-felony offenses are never counted, see U.S.S.G. § 4A1.2(c)(2) (2006), while sentences for other certain specified non-felony offenses are counted only if they meet certain requirements, see U.S.S.G. § 4A1.2(c)(1) (2006).

In the present case, the Defendant argues that he was incorrectly assessed criminal history points for seven prior sentences that should have been excluded pursuant to U.S.S.G. § 4A1.2(c). However, only one of these prior sentences – the Defendant's sentence for a conviction of creating a public disturbance – relates to a non-felony offense that is subject to the requirements of either subsection of U.S.S.G. § 4A1.2(c). For this sentence to be counted, the sentence must have been a term of probation of at least one year or a term of imprisonment of at least thirty days. See U.S.S.G. § 4A1.2(c)(1) (2006). The Defendant's PSR indicates that the Defendant received a sentence of 120 days of imprisonment (suspended) and 18 months of supervised probation for this offense.

Thus, this prior sentence was properly counted, along with the Defendant's other prior misdemeanor sentences, in assessing the Defendant with four criminal history points pursuant to U.S.S.G. § 4A1.1(c).[2]

Accordingly, **IT IS, THEREFORE, ORDERED** that the Defendant's *pro se* "Motion/Letter Requesting Correction" [Doc. 48] is **DENIED**.

IT IS SO ORDERED.

Signed: December 10, 2009

Martin Reidinger
United States District Judge

[2]The subsequent amendment to U.S.S.G. § 4A1.2(c) does not change this analysis. See U.S.S.G. Amendment 709 (eff. Nov. 1, 2007).